



U.S. Department of Justice  
Immigration and Naturalization Service

Public Copy

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

AS



File: EAC-98-255-51163

Office: Vermont Service Center

Date: JUL 20 2001

IN RE: Petitioner:  
Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

IN BEHALF OF PETITIONER: Self-represented

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER.  
EXAMINATIONS

Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as an alien of exceptional ability a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer. -- The Attorney General may, when he deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Masters degree in biochemistry from the Shanghai Institute. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor Service regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to Service regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, I.D. 3363 (Acting Assoc. Comm. for Programs, August 7, 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The petitioner asserts that he is conducting breakthrough cancer research which will impact AIDS research as well. The record contains letters from professors familiar with the petitioner's research and articles published by the petitioner. In his decision, the director initially adopted far too strict a standard, concluding the petitioner had not demonstrated that he and only he presented a significant benefit to the field of endeavor. Certainly a researcher need not demonstrate that he is the only researcher making contributions to his field. Curiously, the director then states that the petitioner is of "similar caliber" to those who have made major discoveries in science. Finally, the director concluded that the petitioner had not demonstrated contributions beyond those normally associated with the research profession. While some of the initial statements in the director's decision appear incongruous, the director's final conclusion is sound.

The petitioner submitted information regarding the serious toll cancer takes on the United States. There is no question that the petitioner is working in an area of intrinsic merit and that cancer treatments are in the national interest. As stated in Matter of New York State Dept. of Transportation, however, it is insufficient to demonstrate that the alien's field of endeavor has intrinsic merit. Furthermore, an alien cannot qualify by playing an important role in a given project if such role could be filled by a competent and available U.S. worker. The alien must present a significant benefit to the field of endeavor.

The petitioner submitted several letters from colleagues. Professor Bryan P. Toole, in whose lab the petitioner works at Tufts University, states:

As Director of our Ph.D. Graduate Program for many years and as head of a major laboratory, I can say with great confidence that [the petitioner] is on the way to becoming an outstanding researcher and shows every indication that his research contributions to U.S. science will be unique and significant.

[The petitioner's] research in my laboratory has focussed on the behavior of cancer cells, especially during the process of metastasis. Metastasis is the mechanism whereby cancer cells escape their original site of growth, and invade and grow in tissues and organs remote from the initial tumor. Metastasis is responsible for most cancer deaths. [The petitioner's] work in this area is original, unique and important both to our understanding of cancer and to its treatment. He has been involved in analyzing the way in which cancer cells interact with nearby normal cells and recruit their assistance in promoting cancer cell invasion of surrounding tissues, a crucial step in tumor metastasis. He is working with a molecule on the outer surface of tumor cells, termed EMMPRIN, that stimulates normal tissue cells to produce enzymes that erode normal tissue, for example the wall of blood vessels, in such a way that the cancer cells can move through that tissue, for example to enter and exit the bloodstream in transit to a metastatic site. [The petitioner] is currently carrying out a combination of molecular experiments, in which he is dissecting the elements of the EMMPRIN molecule that are responsible for its action, and animal experiments based on this molecular work, in which he is testing the effect of normal and altered EMMPRIN on metastasis. This work should lead to developing peptide antagonists that would block EMMPRIN action and thus prevent metastasis.

[The petitioner] has shown incredible intelligence, independence and determination in pursuing the above work. The work that [the petitioner] is doing is unique to this laboratory and it has a very high likelihood of leading to therapeutic benefits for cancer patients.

Professor [REDACTED] at the State University of New York at Stony Brook, states:

[The petitioner] works in the laboratory of [REDACTED] with whom I closely collaborate in research projects dealing with tumor invasion and metastasis. . . . Indeed, in addition to his research in understanding the role of EMMPRIN in tumor invasion and metastasis, [the petitioner] is also mapping the functional domain of EMMPRIN. This will enable us to develop molecules that interfere with the process of tumor invasion and metastasis and therefore reduce the mortality of cancer. [The petitioner] has already demonstrated the ability to write and publish scientific papers which is an important component of a scientist's work. [The petitioner] is making significant progress in his research. I confidently anticipate breakthroughs from his research.

Professor Takashi Muramatsu at the Nagoya University School of Medicine, states:

Since we are studying a cell-surface glycoprotein, basigin, which is also called EMMPRIN and is studied in [REDACTED] laboratory, [the petitioner] in Professor Toole's laboratory comes to know me. By the letter from him I understand the importance of his current work.

[REDACTED] Liu of the Shanghai Institute of Biochemistry, in whose lab the petitioner worked, writes:

Because of his excellent performance, he became a relatively independent researcher but still under my supervision in our Institute. He published two papers based on his work done in my lab. One of them is in the best biomedical journal in [C]hina (in English). The other one is a review. It is rare for a scientist as young as him then to publish a review. The work he participated [in] and contributed much [to] in my lab received a third award of Chinese Academy of Science. After his graduation, his study focus[ed] on the relationship between hepatitis viruses and liver cancer etiology. He was able to demonstrate that liver cancer which has [a] high incidence in China is highly related to the infection of Hepatitis B virus. This research result contributed much to the prevention of liver cancer in China and was published in a very good clinical Journal.

[REDACTED] asserts the petitioner's studies, "could lead to the development of a potential anti-metastasis drug." Professor Guo-fu Hu from Harvard Medical School writes:

[At the Shanghai Institute of Biochemistry, the petitioner] participated in an ongoing project, studying [the] mechanism of action of interferon, under the direction of Professor Xinyuan Liu, a member of the Chinese Academy of Sciences. He quickly demonstrated his unique ability and originality in research and solved an important problem in the regulation of interferon activity which has lasted for years in this field. He demonstrated that cell surface receptors for small nucleotides on [a] macrophage play a pivotal role in mediating interferon action.

... [The petitioner] came to Harvard medical school to join us in a research project on angiogenesis and metastasis in July, 1994. He studied the mitogenic activity of angiogenin, a potent inducer of blood vessel formation, towards endothelial cells in culture, which is the fundamental aspect of the project. For more than 6 months, [the petitioner] worked indefatigable in the lab and I am absolutely convinced that he has done every possible thing with the utmost care and repeated enough times to answer the question definitely. This project is currently going very actively in our lab and [the petitioner's] contribution in the early phase of the work is far-reaching and is highly recognized and often quoted by his successors. He also studied nuclear translocation of angiogenin in endothelial cells, a necessary step for angiogenesis to occur, and demonstrated that nuclear translocation is microtubule and lysosome independent. We published his work in the journal of "Biochemical

and Biophysical Research Communication” and reported this finding in the Annual Conference of the Federation of American Societies for Experimental Biology in April 1998 in San Francisco, and received much intense discussion and interest among scientists. [The petitioner’s] work on angiogenin is instrumental for our subsequent development of angiogenesis inhibitors to combat tumor growth and metastasis. I have to emphasize here that although the subject of angiogenesis and its inhibition has only recently received much media attention and became aware to the general public, it has been under investigation in research laboratories for many years and [the petitioner’s] contribution in this field is significant. Based on [the petitioner’s] study, we have developed a new class of angiogenesis inhibitors that has a profound consequence for cancer therapy and is currently under evaluation in the National Cancer Institute of NIH.

In response to the director’s request for additional documentation, the petitioner submitted another letter from Professor Hu and a letter from [REDACTED] at Tufts University which merely reiterate the information quoted above. These letters are all from individuals who worked with the petitioner or who correspond with the petitioner’s advisor due to similar research interests. While letters from collaborators are useful in explaining the details of the petitioner’s research, they cannot demonstrate, without supporting evidence from other, independent researchers, that the petitioner has made significant contributions to his field. According to his letter, Professor Muramatsu appears to only know of the petitioner’s alleged contributions through correspondence from the petitioner’s advisor or the petitioner himself. In addition, many of the petitioner’s references merely speculate that the petitioner’s work is significant because it may eventually lead to cancer treatment and that the petitioner has the potential to be an outstanding researcher. All research, in order to obtain funding, must show some promise of practical application. There is no evidence that the petitioner’s work has resulted in any treatments or even that treatments based on his research are in clinical trials.

The petitioner submits one letter from an individual with no academic connection to the petitioner. [REDACTED] a principle investigator at the National Institutes of Health, National Cancer Institute, states:

I have known [the petitioner] personally for the past several years and have paid attention to his excellent work and great achievements on tumor angiogenesis and metastasis. His research will yield critical knowledge, improve patient care, and save lives if he can stay in the country. . . . He is using modern molecular biology techniques to modulate EMMPRIN activity in tumors and inhibit tumor metastasis and has made significant progression. He is also trying to apply this basic knowledge clinic application and developing “molecule therapy” for cancers. I’m expecting exciting result from him. [The petitioner] is one of those very few persons who know most about cancers.

[REDACTED] obtained his Ph.D. in 1994 and began working for NIH at that time. It does not appear that his evaluation represents the opinion of NIH. In addition, the letter does not indicate how Dr. Hou

became familiar with the petitioner's work. As with the letters from the petitioner's collaborators, Dr. Hou merely speculates that the petitioner's work will lead to an "exciting result."

The record also contains several articles authored by the petitioner. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces the Service's position that publication of scholarly articles is not automatically evidence of significant contributions; we must consider the research community's reaction to those articles.

As stated above, the petitioner has provided no letters from independent researchers evaluating his work. In addition, the petitioner has not provided any evidence that his work has been cited by independent researchers. Significantly, as of the date the petition was filed, the petitioner had not published any articles regarding EMMPRIN, the area in which he claims to have made significant breakthroughs. Without publication of the petitioner's results and independent review of his findings, we are unable to evaluate the importance of his alleged contributions.<sup>1</sup>

Finally, as evidence of the importance of his research area, the petitioner provided copies of articles published by his advisor before the petitioner joined his lab. These articles demonstrate, however, that Professor Toole was researching EMMPRIN long before the petitioner joined his lab. While the petitioner may be adding to the general pool of knowledge in this area, the petitioner's field, like most science, is research-driven, and there would be little point in publishing research which did not add to the general pool of knowledge in the field. The petitioner has not demonstrated that his personal contribution to this area of research is considered significant beyond his circle of collaborators.

The petitioner also submitted a United States Army Medical Research and Materiel Command Research Program evaluating Professor Toole's grant request to research the role of EMMPRIN in tumor progression. The reviewers approved the request, concluding that while "some of the proposed work will be mainly confirmatory of the initial observation," the research "is likely to yield important results." The reviewers also noted that:

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<sup>1</sup> It is acknowledged that the petitioner has since co-authored an article on EMMPRIN; however, a petitioner must be able to demonstrate eligibility at the time of filing. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971).

although the aims and experimental approach to be utilized are not particularly innovative, the basis for tumor cell-stroma interaction is relatively unexplored; thus, the proposed studies are viewed as reasonably innovative.

It can be argued, however, that most research, in order to receive funding, must present some benefit to the general pool of scientific knowledge. It does not follow that every researcher working with a government grant inherently serves the national interest to an extent which justifies a waiver of the job offer requirement.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, U.S.C. 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

**ORDER:** The appeal is dismissed.